



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2023-0075]

RIN 1625-AA00

### Safety Zones; Recurring Fireworks Displays and Swim Events in Coast Guard

#### Sector New York Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is revising its regulations for permanent safety zones in the Coast Guard Sector New York Captain of the Port Zone for recurring fireworks displays and swim events. This revision will update the list of events, alter the means of notification, and clarify the function of these safety zone regulations. The establishment of the safety zones is necessary to protect event participants, waterway users, and vessels from the potential hazards associated with these recurring organized water events. When subject to enforcement, no person is authorized to access the safety zones without permission from the Captain of the Port (COTP) or the COTP's designated representative.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0075 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MSTC Stacy Stevenson, Waterways Management Division, U.S. Coast Guard; telephone 718-354-4197, email D01-SMB-SecNY-Waterways@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Captain of the Port New York (COTP) is establishing, amending, and updating annual and recurring swim events and fireworks safety zones codified in 33 CFR 165.160 in Tables 1 and 2, for the COTP zone.

On May 4, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zones; Recurring Fireworks Displays and Swim Events in Coast Guard Sector New York Zone” (88 FR 28444). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this rule. During the comment period that ended June 5, 2023, we received two comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Six firework displays are scheduled to occur in June. Delaying the effective date of this rule would be impracticable because the absence of a safety zone around barge-based fireworks displays within the COTP zone poses a significant risk to public safety. Therefore, it is important to enforce the safety zones without delay to mitigate potential hazards to mariners and ensure effective management of vessel traffic around these displays.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The revision of Table 1 and Table 2 to § 165.160 amends and updates recurring safety zones in the COTP zone. This rule will prohibit entry into those safety zones without permission of COTP to protect spectators, mariners, and other persons and property from potential hazards presented during the firework display or swim event associated with the safety zone.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received two comments on our NPRM published May 4, 2023 (88 FR 28444). Both comments received were in favor of the rule overall.

One commenter asked about the implementation of other safety precautions if the safety zone failed or was breached. These precautions include, but are not limited to, regular inspections, emergency response protocols, signage, and ongoing monitoring and evaluation of the safety zones' effectiveness. Additionally, many fireworks displays are scheduled to occur within areas monitored by the Vessel Traffic Center, who will ensure adequate notice and predictability in the New York and New Jersey waters through coordination of vessel movements and dissemination information.

The second commenter, also in favor of the safety zones around fireworks displays, recommended that the fireworks take place in an area that prevents debris from entering the water and that a cleanup plan be in place. While the Coast Guard takes its role as an environmental steward seriously, the purpose of this safety zone is to manage traffic around the displays and ensure safety. This rulemaking does not contemplate the environmental concerns relative to the fireworks themselves, but of the impact on the environment by the safety zone. Therefore, this rule aligns with the principles of NEPA and underscores the commitment to mitigate adverse environmental effects while

managing vessel traffic effectively. Further, the Coast Guard is not serving as the permitting agency for these events, they are coordinated by other government agencies.

This rule updates Table 1 to § 165.160 by consolidating all fireworks displays launched from a barge location to one row and removing other firework displays. This rule also completely replaces Table 2 to § 165.160 with new swim events and their respective locations. Only event sponsors, designated participants of swim events, and official patrol vessels will be allowed to enter safety zones without needing to seek permission. Spectators and other vessels not registered as swim event participants cannot enter the safety zones without the permission of the COTP or the Designated Representative. Finally, the rule reorganizes and updates the text of § 165.160 to be more understandable to the reader, as described in the NPRM.

There are no changes to the regulatory text of this rule from the proposed rule in the NPRM.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability of other waterway users to safely transit around the safety zones in many cases, and the size and duration of

the safety zones will impact a small, designated area of the waterway for a relatively short period of time. Moreover, the Coast Guard will notify mariners of the enforcement via marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, by an on-scene oral notice, or signage as appropriate. The rule will also allow vessels to seek permission to enter the zone if necessary.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule prevents vessels from transiting areas specifically designated as safety zones during the periods they are subject to enforcement. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and

160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Revise § 165.160 to read as follows:

**§ 165.160 Safety Zones; Recuring Fireworks Displays and Swim Events Held in Coast Guard Sector New York Zone.**

(a) *Regulations.* The general regulations in subpart C of this part as well as the following regulations apply to the safety zones associated with the recurring fireworks displays and swim events listed in tables 1 or 2 to this section, respectively.

(1) Under the general safety zone regulations in subpart C of this part, no person may enter the safety zone described in table 1 or 2 of this section unless authorized by the Captain of the Port (COTP) or the COTP's Designated Representative.

(2) To seek permission to enter the designated safety zone, contact the COTP or the COTP's Designated Representative via VHF-FM Marine Channel 16, or by contacting the Coast Guard Sector New York command center at 718-354-4356.

(3) Event organizers must ensure that fireworks barges have signage on their port and starboard side labeled "Fireworks - Stay Away". This sign will consist of 10- inch-high by 1.5-inch-wide red lettering on a white background.

(4) Shore sites used in these locations will display a sign labeled "Fireworks - Stay Away" with the same dimensions.

(b) *Definitions.* As used in this section:

*Designated representative* means any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

*Official Patrol Vessels* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned as an on- scene representative or approved by the COTP.

*Spectators* means all persons and vessels not registered with the event sponsor as participants or official patrol vessels.



(c) *Enforcement periods.* (1) Safety zones for fireworks-display events listed in Table 1 of this section will be subject to enforcement for approximately one hour between 6 p.m. to 1 a.m. when a barge with a “Fireworks - Stay Away” sign on the port and starboard side is on-scene or a “Fireworks - Stay Away” sign is posted in a location listed in Table 1 to § 165.160.

(2) The regulations in this section will be subject to enforcement for the duration of each event on or about the dates indicated in Table 2 of this section.

(3) For events in Tables 1 and 2 that do not have a date or location listed, or if the event occurs on a date or location other than the one that is listed, then exact dates and times of the enforcement period will be announced via marine broadcast, local notice to mariners, distribution in leaflet form, local news media, or by an on-scene oral notice as appropriate.

(4) Notifications of enforcement times for events listed in Table 1 and 2, including any changes to the enforcement dates or times listed in this section, may be made via marine broadcasts, local notice to mariners, local news media, distribution in leaflet form, or by an on-scene oral notice and signage.

(d) *Location.* If the specific location of a safety zone for fireworks displays is not listed in Table 1, an announcement will be made by marine broadcast, local notice to mariners, distribution in leaflet form, local news media, or by an on-scene oral notice as appropriate. The specific locations of swim event safety zones are listed in Table 2. Any modification to the location of safety zones described in this section will be listed in USCG First District Local Notice to Mariners at: <http://www.navcen.uscg.gov/>.

Table 1 to § 165.160 -- Fireworks Displays

<b>1.0 Event</b>	<b>Location<sup>1</sup></b>
1.1 Twin Island, Long Island Sound Safety Zone	Launch Site: A land shoot located on the east end of Orchard Beach, NY, in approximate position 40°52'10" N, 073°47'07" W. This Safety Zone includes navigable waters within a 200-yard radius from the launch site.
1.2 Arthur Kill, Elizabeth, NJ Safety Zone	Launch Site: A land shoot located in Elizabeth, NJ, in approximate position 40°38'50" N, 074°10'58" W. This Safety Zone includes navigable waters within a 150-yard radius from the launch site.

1.3 Wards Island, East River, NY Safety Zone	Launch Site: A land shoot located on Wards Island in approximate position 40°46'57" N 073°55'28" W, approximately 330 yards north of the Robert F. Kennedy Bridge (Triborough Bridge). This Safety Zone includes navigable waters within a 200-yard radius from the launch site.
1.4 Barge Based Fireworks Displays	All waters within the Sector New York COTP Zone within an area up to a 500-yard radius of a firework barge or barges used during the storage, preparation, and launching of fireworks.

<sup>1</sup> All coordinates listed in Table 1 to § 165.01-165.160 reference Datum NAD 1983.

Table 2 to § 165.160 -- Swim Events

<b>1.0 Event</b>	<b>Date/Location<sup>1</sup></b>
1.1 Hudson River, Ulster, NY, Swim	Date: The first weekend after the 4th of July.
	Location: The safety zone includes all navigable waters of the Hudson River in the vicinity of Ulster Landing, bound by the following coordinates: 42°00'03.7" N, 073°56'43.1" W, thence to 41°59'52.5" N, 073°56'34.2" W, to 42°00'15.1" N, 073°56'25.2" W, to 42°00'05.4" N, 073°56'41.9" W, thence along the shoreline to the point of origin.
1.2 Hudson River, Nyack to Kingsland Point Swim	Date: 2nd weekend in September.
	Location: The safety zone includes all navigable waters of the Hudson River between Nyack, NJ and the Tarrytown Lighthouse bound by the following coordinates: 41°05'10.7" N, 073°55'03" W, thence to 41°05'02" N, 073°52'25" W, to 41°05'19" N, 073°52'22" W, to 41°05'25" N, 073°54'51" W thence along the shoreline to the point of origin.
1.3 Navy Seal Swim, New York Harbor	Date: One Saturday or Sunday in August
	Location: The safety zone includes all navigable waters bound by the following coordinates: 40° 41' 26" N, 74° 03' 17" W, thence to 40° 41' 02" N, 74° 02' 25" W, to 40° 41' 40" N, 74° 02' 00" W, to 40° 42' 25" N, 74° 01' 08" W, to 40° 42' 28" N, 74° 01' 07" W, to 40° 41' 57" N, 74° 02' 07" W, to 40° 41' 40" N, 74° 02' 30" W, to 40° 41' 24" N, 74° 02' 27" W, to 40° 41' 12" N, 74° 02' 38" W, to

	40° 41' 29" N, 74° 03' 15" W, thence back to the point of origin.
1.4 Hudson River, Newburgh to Beacon Swim	Date: One Saturday or Sunday in July
	Location: The safety zone includes all navigable waters of the Hudson River between Newburgh and Beacon, NY bound by the following coordinates: 41°30'24.2" N, 074°0'17.4" W, thence to 41°30'27.8" N, 073°59'16.8" W, to 41°30'11.6" N, 073°59'19.9" W, to 41°30'03.4" N, 074°0'17.2" W, thence north along the shoreline to the point of origin.
1.5 Long Island Sound, Horseshoe Harbor Swim	Date: 4th weekend in July and 2nd weekend in August.
	Location: The safety zone includes all navigable waters of the Long Island Sound bound by the following coordinates: 40°55'32" N, 73°44'37" W, thence southeast to 40°55'28" N, 73°44'14" W, to 40°55'01" N, 73°43'59" W, to 40°54'01" N, 73°44'17" W, to 40°54'48" N, 73°45'10" W, thence along the shoreline back to the point of origin.
1.6 New York Harbor, Liberty Island to Morris Canal Swim	Date: One weekend in July
	Location: The safety zone includes all navigable waters of the New York Harbor bound by the following coordinates: 40° 41' 27" N, 74° 02' 25" W, thence to 40° 41' 22" N, 74° 02' 13" W, to 40° 41' 36" N, 74° 02' 04" W, to 40° 42' 39" N, 74° 01' 42" W, to 40° 42' 42" N, 74° 02' 05" W, to 40° 42' 31" N, 74° 01' 55" W, thence back to the point of origin.

<sup>1</sup> All coordinates listed in Table 2 to § 165.01-165.160 reference Datum NAD 1983.

Dated: June 24, 2023.

Z. Merchant,  
Captain, U.S. Coast Guard,  
Captain of the Port New York.

[FR Doc. 2023-17514 Filed: 8/15/2023 8:45 am; Publication Date: 8/16/2023]